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**From:** Simon, Paul [Simon.Paul@epa.gov]  
**Sent:** 6/14/2022 12:54:11 PM  
**To:** Evangelista, Pat [Evangelista.Pat@epa.gov]; Prince, John [Prince.John@epa.gov]; Lieber, Thomas [Lieber.Thomas@epa.gov]; Garcia, Lisa [Garcia.Lisa@epa.gov]; Glenn, Olivia [Glenn.Olivia@epa.gov]; Mugdan, Walter [Mugdan.Walter@epa.gov]; Mears, Mary [Mears.Mary@epa.gov]; Rodriguez, Elias [Rodriguez.Elias@epa.gov]; Wilson, Eric [Wilson.EricJ@epa.gov]  
**Subject:** FW: EPA IG Investigation Request Follow Up // Gowanus  
**Attachments:** VoG—EPA IG Investigation Request\_Followup June 14.pdf

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**From:** Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
**Sent:** Tuesday, June 14, 2022 8:06 AM  
**To:** Simon, Paul <Simon.Paul@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Patterson, Kenneth <Patterson.Kenneth@epa.gov>  
**Subject:** FW: EPA IG Investigation Request Follow Up // Gowanus

Sharing, in case you hadn't seen this.

Larry

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**From:** Linda LaViolette <linda@voiceofgowanus.org>  
**Sent:** Tuesday, June 14, 2022 8:00 AM  
**To:** O'Donnell, Sean <O'Donnell.Sean@epa.gov>; Breon Peace <Breon.Peace@usdoj.gov>  
**Cc:** Joe Biden <President@whitehouse.gov>; Kirsten Gillibrand <kg@kirstengillibrand.com>; Nydia Velazquez <margarita.velazquez@mail.house.gov>; Jerrold Nadler <CongressmanNadler@mail.house.gov>; Kathleen Hochul <correspondence.office@exec.ny.gov>; Jabari Brisport <brisport@nysenate.gov>; Jo Anne Simon <simonj@nyassembly.gov>; Marcela Mitaynes <mitaynesm@nyassembly.gov>; Regan, Michael <Regan.Michael@epa.gov>; Matthew Silverman <matthew.silverman@usdoj.gov>; Brenda Mallory <BMallory@ceq.eop.gov>; Tejada, Matthew <Tejada.Matthew@epa.gov>; Lee, Charles <Lee.Charles@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Garcia, Lisa <Garcia.Lisa@epa.gov>; OIG Hotline <OIG\_Hotline@epa.gov>; EJHotline <EJHotline@epa.gov>; Basi Seggos <basil.seggos@dec.ny.gov>; Breen, Barry <Breen.Barry@epa.gov>; Fox, Radhika <Fox.Radhika@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Carr, Brian <Carr.Brian@epa.gov>; Michael Lynch <mike\_lynch@schumer.senate.gov>; Erin Sager Vaughn <erin\_sager@schumer.senate.gov>; Steve Barton <Steve\_Barton@schumer.senate.gov>; Tim Ryder <tim\_ryder@schumer.senate.gov>; Jess Fassler <Jess\_Fassler@gillibrand.senate.gov>; Wiley, Daniel <Daniel.Wiley@mail.house.gov>; Amy B. Rutkin <amy.rutkin@mail.house.gov>; Sara Agars <Sara.Agars@exec.ny.gov>; Susannah Pasquantonio <pasquantonios@nyassembly.gov>; Patrick Donovan <patrick\_donovan@schumer.senate.gov>; Margot Brown <marbrown@edf.org>; Mark Izeman <mizeman@nrdc.org>; Suzanne Novak <snovak@earthjustice.org>; Michael Dulong <mdulong@riverkeeper.org>; Lucy Lang <inspector.general@ig.ny.gov>; Nora Brickner <nbrickner@council.nyc.gov>; Mia Perez <MPerez@council.nyc.gov>; Lincoln Restler <Ex. 6 Personal Privacy (PP)> Maureen Koetz <Koetz@koetzduncan.com>; Jack Riccobono <jack@voiceofgowanus.org>; info@voiceofgowanus.org; LeGendre, Rumer <Rumer.LeGendre@mail.house.gov>  
**Subject:** EPA IG Investigation Request Follow Up // Gowanus

By Registered Mail and Email

Mr. Sean W. O'Donnell  
Inspector General  
US Environmental Protection Agency

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June 14, 2022

Dear Sirs:

By letter dated May 16, 2022 (copy attached), Voice of Gowanus (VoG) requested the USEPA Inspector General open a full investigation of multiple compliance and enforcement failures affecting the Gowanus Canal under Federal and State laws and regulations, including but not limited to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA or "Superfund"), and the Clean Water Act (CWA).

VoG is writing again to follow-up on that correspondence for three reasons:

1. To request USEPA IG acknowledgement of receipt of the May 16, 2022 investigation request;
2. To identify additional areas for investigation (including potential criminal activity) based on events transpiring since the prior request;
3. To provide additional information regarding regulatory failures noted in the previous investigation request.

As the May 16th letter details, devastating effects from decades of compliance failure in Gowanus are being compounded by a planned 80-block rezoning that will likely add more than 30,000 additional residents to a sewershed already burdened with a Superfund Listing improperly disaggregated from 33 Canal-surrounding contamination sites in the NPL designation, an Impaired Water designation under CWA §313, repetitious Combined Sewer Overflow (CSO) Enforcement Orders leading to a Long Term Control Plan of questionable effectiveness, failed Water Quality Standard setting and enforcement, and a Sewage Backup Administrative Order that has yet to prevent raw sewage flooding of basements in Gowanus and surrounding neighborhoods. Now, premature construction is releasing contaminants and threatening the integrity of Canal, groundwater, and soil cleanups throughout the Gowanus area.

### **Construction Pile Driving in Source Contamination Operable Units**

At a May 24, 2022 Gowanus Community Advisory Group (CAG) meeting with staff from EPA Region 2, NY State Department of Environmental Conservation (NYSDEC), and NY City Department of Environmental Protection (NYCDEP) in attendance, CAG and community members enquired as to the regulatory oversight being performed for the recent initiation of construction pile driving (i.e., 90 foot high foundation piles) on a parcel of the Citizens Gas Works Cleanup site to learn whether and how officials were providing approvals and oversight for construction in severely contaminated areas.

Specifically, the community asked which officials in any of the Agencies had reviewed the action, or provided approvals, or was conducting oversight of the construction to prevent toxic leakage, utility damage, and the compromising of other cleanup technology operating in the area. None of the Agencies indicated any prior review or ongoing monitoring action of the 90-foot piles penetrating the contaminated soil and groundwater, creating exposure pathways and toxic volatilizations in close proximity to a school and playground. Moreover, no regulatory staff could confirm compliance or consistency with Site Management Plans or the Certificate of Completion (assuming either has been completed for the Citizens Site), or if the pile driving was being monitored to protect the integrity of the centuries-old Bond-Lorraine sewer line running beneath the property.<sup>14</sup>

However, when the regulators were pressed to explain how 90-foot piles were being driven into a remedy-incomplete Manufactured Gas Works site with coal tar, PAH, and BTEX contamination as deep as 150 feet below the surface with no regulatory oversight, a representative of the NYSDEC claimed the only regulatory role for DEC in construction oversight at a Superfund Operable Unit was to receive and acknowledge a "Change of Use" certification. The DEC official further stated

“there is never a formal approval that we give for this work.”<sup>12</sup> In addition, the DEC representative indicated the regulatory deference, if not full abdication, adopted by DEC was driven by tax abatement program deadlines, explaining to the community: “I’m sure you’re aware of the 421a program which is the purpose these piles are going in. They [meaning the developers] have until June 15 to place the piles in the site to qualify for tax credits.”<sup>13</sup>

As the NYSDEC representative confirmed, regulatory overseers in all three environmental protection agencies at the Federal, State, and Municipal levels were all taking a hard pass from their duties—and risking public exposure, expanded contamination, and broader remedy damage—to allow a select group of developers to meet a June 15, 2022 construction start date necessary to claim expiring public subsidies to further private development and profit. At a minimum, USEPA and NYSDEC oversight should have confirmed that these piles in these locations reaching the intended depths would not create human exposure, damage the utility and remedy transport and pumping infrastructure, or otherwise damage the site capping efforts crucial to the integrity of the planned cleanup.

### **USEPA Decision-Making for Parcels Subject to Rezoning**

In addition, further review of previous USEPA claims and actions has recovered key information provided by USEPA counsel to the CAG regarding the failure of Region 2 to participate in the Environmental Impact Review Process as a Cooperating and/or Involved Agency under the legal requirements of both the National Environmental Policy Act and the NY State Environmental Quality Review Act (Item D(4) in the May 16, 2022 request). Both statutes mandate that any Agency involved in decision-making for the action being assessed actively cooperate or be involved in the EIS. The NYS SEQRA Handbook states, “an agency is “involved” when the determination is made that the agency has ***or will have*** a discretionary decision to make ***regarding some aspect*** of the action (emphasis added).”<sup>14</sup>

The viability of most of the planned rezoning area for residential towers and other reuse depends entirely on whether a hundred years of embedded contamination can be removed or otherwise remediated such that the massive disturbances of soil and water required in high-rise construction (e.g., 90-foot foundation piles noted above) can be approved. To claim administrative land use re-designation through rezoning is separate from the decisions required to implement the rezoning via multiple construction and development projects is an overt act of segmentation barred by both statutes. Moreover it is inconceivable that the USEPA believes it has no decision-making responsibility in the development, construction, and sustainability of thirty-story towers being constructed around one of the country’s most polluted waterways on top of soil and groundwater full of toxic contamination in a federal flood zone that is registered on the National Priorities List.

Examples of how consistently USEPA has been—and continues to be—a decision-maker in public and private party execution of the Gowanus Rezoning Plan are provided in the CAG meeting minutes of September 26, 2017, during which USEPA Region 2 counsel detailed all the decisions USEPA was making regarding the issuance of orders, cleanup, and other remedy actions required for reuse:

—Major settlement issues for the balance of this year: EPA is in discussions with National Grid and NYS about issues related to the Fulton cleanup. We entered into an order last year with the City; we contemplated entering into an order with National Grid related to the cleanup of the park and other aspects – discussions are beginning now for a \$100M cleanup order; there are discussions with the Powerhouse, which needs to come to EPA for PCB cleanup approval and to NYS for what they’re doing with the brownfields program. It’s a very complex cleanup, in addition to the First Street Basin. We are in discussions with parties to cash out.

—There are 3.6 miles of bulkheads; the National Grid cleanup for Public Place bulkheads and the Fulton cleanup covers part of it – EPA is also working with developers. In total have eight different bulkhead orders going on right now in eight stages of discussion. At \$10,000/linear foot, each requires separate approval, a consent order, and a design under EPA supervision. Later this year, we need to secure agreements with all parties to do remedial action (right now EPA is doing remedial design, which is 10% of the cost) such as dredging and tanks, which may include Natural Resources Damage Assessment (NRDA) trustees. The bulkheads need to be built first, specifically the parts around the upper part of the Canal and the pump station. EPA may negotiate a separate agreement with PRPs to split that work out from the overall dredging/capping work and get started before finalize the overall dredging/capping agreement.

These orders, settlements, and cleanup requirements, inter alia, remain operational today (including the repetitious attempts at enforcement and compliance) and are inextricably part of Gowanus Neighborhood air, land, and water reuse.

In light of the above, VoG reiterates its request for EPA IG investigation of the multiple issues previously identified, and hereby appends the following additional areas of investigation to the original letter of May 16, 2022:

- Continued USEPA leadership failure to rectify the original NPL Listing improprieties that left Subsite/Operable Units of the Gowanus Canal under the jurisdiction of NYSDEC given the obvious likelihood that improper and dangerous construction activities to “vest” 421a tax subsidies would occur;
- Multiple actions by EPA Region 2 that are approaching willful blindness to State and Municipal actions to minimize or avoid needed cleanup actions, manipulate remedy and construction timing, avoid ongoing compliance requirements under CWA, CERCLA, and Federal Emergency Management flood requirements, and generate inadequate and misleading data and information in the Gowanus Rezoning Environmental Impact Statement (EIS);
- Failure of oversight on all manner of monitoring and compliance assurance that would prevent dangerous premature construction for the primary purpose of securing expiring taxpayer subsidies;
- Failure to legally compel sewage retention tank construction through mandamus and other enforcement options under federal law;
- Failure of Region 2 to participate in the Environmental Impact Review Process as a Cooperating and/or Involved Agency, and prevent illegal segmentation between zoning administrative actions and inseparable redevelopment actions thereby intended in which USEPA has ultimate decision-making authority;
- Potential criminal violations of bribery, campaign finance, or other laws that may be affecting environmental protection decision-making in the Gowanus in favor of development and against human health and the environment, including:
  - Illegal Brownfield designations to provide financial assistance to developers;
  - Illegal issuance of construction permits or other building approvals in contravention of pre-existing Federal and State environmental law requirements at sites where construction will occur;
  - Unsupervised, faulty cleanup activity being used as a pretext for illegal evictions.

At a prior meeting of the Gowanus CAG, USEPA Region 2 confirmed the “lack of progress in certain areas, particularly with the CSO control tanks and non-compliance [with USEPA Enforcement Orders] by the City, and intentional and willful non-compliance by the City.” Region 2 also told the CAG, “everyone knows that until the [administratively ordered sewage retention] tanks are built, even before the development happens from the rezoning, the cleanup is inadequate.” Once again, CAG meeting revelations confirm the need for EPA IG investigation to identify and prevent fraud, waste, abuse, mismanagement and misconduct, and even possible criminal actions.

VoG thanks you in advance for confirming receipt of this and the prior correspondence, and for your attention to the ongoing enforcement failures at multiple levels of government. We hope the Gowanus Neighborhood will receive the necessary and proper enforcement attention our community deserves.

Sincerely yours,

Linda LaViolette & Jack Riccobono  
Co-Chairs, Outreach Committee  
Voice of Gowanus  
[linda@voiceofgowanus.org](mailto:linda@voiceofgowanus.org)  
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Cc:

The Honorable Joseph R. Biden Jr.  
The Honorable Chuck Schumer  
The Honorable Kirsten Gillibrand  
The Honorable Nydia Velázquez  
The Honorable Jerrold Nadler  
The Honorable Kathy Hochul  
The Honorable Jabari Brisport  
The Honorable Jo Anne Simon

The Honorable Marcela Mitaynes  
Administrator Michael Regan, EPA  
Matthew Silverman, Assistant U.S. Attorney, Chief of Environmental Litigation, Eastern District, DOJ  
Brenda Mallory, Chair, Council on Environmental Quality, Executive Office of the President  
Matthew Tejada, Director, Office of Environmental Justice, EPA  
Charles Lee, Senior Policy Advisor, Office of Environmental Justice, EPA  
Lawrence Starfield, Acting Assistant Administrator, Office of Enforcement and Compliance Assurance, EPA  
Administrator Lisa Garcia, EPA Region 2  
OIG Hotline

Atch: VoG Letter to USEPA Inspector General dtd May 16, 2022

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<sup>[1]</sup> The Gowanus Superfund Community Advisory Group (CAG) has constantly sought answers through various CAG Committees regarding the conduct of the multiple soil and water cleanups in the Canal Zone, including properties and parcels left in State Superfund or State Brownfield programs that are clearly Subsites or Operable Units of the Federal Superfund Listing. That very evening, the CAG had only just received Region 2 answers to several written questions in which USEPA assured the Community in writing it would be overseeing the NYSDEC monitoring activities to “include geotechnical monitoring (vibration and crack monitoring) to protect nearby utilities and other sensitive structures at the site.” While not specified, “sensitive structures” other than the Bond-Lorraine sewer include nearly two dozen coal tar recovery wells on and around the Citizens property intended to inter alia, prevent recontamination of the Gowanus Canal under the Superfund cleanup.

<sup>[2]</sup> A video recording of the CAG May 24, 2022 Meeting is available [here](#). The exchange regarding the regulatory oversight (or lack thereof) for the 90-foot piles being drive-in to the contaminated soil and groundwater begins at approximately 1:35:00 of the tape.

<sup>[3]</sup> CAG May 24, 12002 Meeting Recording, approximately 1:40:00

<sup>[4]</sup> THE SEQR HANDBOOK, 4TH Edition, Chapter 3: PARTICIPATION IN THE SEQR PROCESS, p.62.

On Mon, May 16, 2022 at 8:00 AM Linda LaViolette <[linda@voiceofgowanus.org](mailto:linda@voiceofgowanus.org)> wrote:

By Registered Mail and Email

Mr. Sean W. O'Donnell, USEPA Inspector General  
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Office of Inspector General  
1200 Pennsylvania Avenue, NW (2410T)  
Washington, DC 20460  
[ODonnell.Sean@epa.gov](mailto:ODonnell.Sean@epa.gov)

May 16, 2022

Given that the USEPA Inspector General is the relevant oversight official trusted to speak the truth, promote good governance, and contribute to improved human health and the environment in the United States, our group Voice of Gowanus (VoG), a coalition of long-standing community organizations in Brooklyn's Gowanus neighborhood, is contacting you to investigate extensive enforcement and compliance failures related to the Gowanus Canal and its environs.

## WHY WE ARE REACHING OUT

Gowanus is an epicenter of serious, overlapping environmental issues: Superfund Listing (with an additional 33 brownfield sites surrounding the limited Canal NPL designation), an Impaired Water designation under the Clean Water Act §313, repetitious Combined Sewer Overflow (CSO) Enforcement Orders leading to a Long Term Control Plan of questionable effectiveness, failed Water Quality Standard setting and enforcement, and a Sewage Backup Administrative Order that has yet to prevent repeated raw sewage contamination in basements all across our community. All of these compounding issues make the Gowanus Canal one of the foremost nationwide examples of “a community overburdened by pollution.” The inadequate, piecemeal cleanup at the improperly delineated Gowanus Canal Superfund site, along with continued CSOs, sewage backups, and permitting violations together pose a serious threat to human health and the environment. These failures require investigation to identify and prevent fraud, waste,

abuse, mismanagement, and misconduct arising from this multi-decade failure to fully implement controlling federal law (the Comprehensive Environmental Response Compensation and Liability Act (CERCLA or “Superfund”), and the Clean Water Act (CWA)) in a moment when responsible parties are taking new actions that will yet again exacerbate these already harmful conditions.

At the recent meeting of the Gowanus Superfund Community Advisory Group (CAG) on April 26th, 2022, a USEPA Region 2 representative confirmed the “lack of progress in certain areas, particularly with the CSO control tanks and non-compliance [with USEPA Enforcement Orders] by the City, and intentional and willful non-compliance by the City.” Region 2 also told the CAG, “Everyone knows that until the [administratively ordered sewage retention] tanks are built, even before the development happens from the rezoning, the cleanup is inadequate.”

Besides leaving excessive levels of legacy toxins in the soil and groundwater of the area, these ongoing federal compliance failures spanning nearly half a century are poised to further compound the environmental injustice that has plagued the Gowanus area and its border neighborhoods since nineteenth century industrialization. As part of the massive rezoning referenced above, which more accurate estimates suggest could bring over thirty thousand new residents to the overburdened 80-block contamination zone, New York City is sponsoring development of low-income housing and a school on the most heavily contaminated areas of the former Citizen’s Manufactured Gas Works. Like other gas plant sites in the area, coal tar, benzene and related toxins, and polyaromatic hydrocarbons remain in the soil and groundwater under and near the sites at levels well above the legal objectives for soil cleanup goals and groundwater quality standards. Another former gas works parcel—still not remedied in spite of New York’s knowledge of gas plant contamination and danger since at least 1979—houses a public pool critical to the welfare and recreation of the public housing residents in our neighborhood. As raw sewage discharges persist, sea level rise and storm surge risks further compromise the Canal’s ability to manage flooding in the FEMA Zone A. This has led to the entire area being identified as a Disadvantaged Community by the Climate Justice Working Group (CJWG) as part of New York State efforts to combat climate injustice.

In addition to the statutory issues affecting the Gowanus, attempts by USEPA officials to fully apprise the affected community regarding inadequate response actions and secure all legally required response actions from the Potentially Responsible Parties have been met with public condemnation and potentially inappropriate personnel actions by regulatory officials charged with full transparency. Staff of the NYSDEC have publicly admonished USEPA personnel in public correspondence for describing shortcomings of proposed remedial actions, and New York City officials have claimed unavailable privileges to shield incorrect assertions regarding stormwater management requirements under the State Pollution Discharge Elimination permits (SPDES) and the Superfund remedy. Adverse personnel actions appear to be ongoing.

Only investigation, truth, and good governance will prevent thousands of vulnerable current and prospective Gowanus residents from environmental threats and exposure that federal laws were specifically enacted to prevent. USEPA leadership must investigate the blatant disregard of discharge, backup, and restoration requirements by New York City and other responsible parties that have plagued the Gowanus for half a century, leaving it with permanent coal tar repositories, toxins, and storm, sea, and sewage waters flooding from without and within.

## **OUR REQUEST TO YOU**

VoG hereby requests that you and your office immediately open an investigation into the failures of due process, enforcement and compliance assurance, as well as remedial response described herein affecting the Gowanus Canal and its surrounding neighborhoods and ecosystem. This investigation is imperative given New York City, a major cleanup responsible party, is also openly defying USEPA orders for sewer backup elimination, sewer retention tank construction, and SPDES provisions, while actively permitting redevelopment activity that will expose more vulnerable families, workers, and business owners to pollution and climate damage.

Specifically, VoG requests investigation into the following programmatic failures by New York City and other responsible parties to comply with federal law (including delegated authorities), and programmatic failures of Federal and State regulators in Region 2 to enforce federal law (including delegated authorities):

## **A. CERCLA/Superfund**

1. Failure to include all parcels of three Manufactured Gas Works sites (Citizens, Fulton, Metropolitan), as well as multiple industrial and commercial source parcels bordering the Gowanus Canal, as Subsites and/or Operable Units of the Canal NPL Listing in 2010.
  - This includes the failure to enforce institutional controls at these parcels that limited restricted residential uses, and the seemingly arbitrary application of such institutional controls at the various parcels subject to similar levels of contaminated soil and groundwater.
2. Failure to apply CERCLA statutory, regulatory, and process requirements (including Applicable, Relevant, and Appropriate Requirements or ARARs) to cleanup of affected soils and the massive combined plume contaminating the Canal's interconnected groundwater system, especially for parcels that will be rezoned for residential use.
3. Improper inclusion of ineligible Superfund Subsites and Operable Unit parcels and groundwater in the New York State Brownfield Program.
4. Failure to enforce multiple Superfund Administrative Orders, including injunctive and other relief.
5. Improper substitution of developer entities for Responsible Parties to pay for and execute necessary cleanup actions.

## **B. Environmental Justice**

1. Failure to meet requirements of Executive Order 14008 requiring the Administrator of the Environmental Protection Agency to strengthen enforcement of environmental violations with disproportionate impact on underserved communities through the Office of Enforcement and Compliance Assurance.
2. Failure to execute the April 7, 2021 directive of Administrator Michael Regan on *Commitment to Environmental Justice* to strengthen enforcement of environmental statutes and civil rights laws in communities overburdened by pollution.
3. Failure to execute the April 26, 2021 directive from Lawrence E. Starfield, Acting Assistant Administrator to advance these Presidential and Administrator environmental justice (EJ) goals noted above that included, inter alia, a requirement to:
  - Prevent further pollution due to noncompliance, mitigate past impacts from pollution, and seek penalties for violations that impact overburdened communities;
  - Obtain injunctive relief that remediates the pollution and addresses past harms to communities; and
  - Enforce cleanup at all subsites and operable units of a fully and accurately designated Gowanus Canal Superfund Site.
4. Failure of Region 2 to participate in the Environmental Impact Review Process as a Cooperating and/or Involved Agency under the applicable requirements of both the National Environmental Policy Act and the NY State Environmental Quality Review Act, in accordance with requirements of EO 14008 to ensure that all federal agencies develop programs, policies, and activities to address the disproportionately high and adverse health, environmental, economic, climate, and other cumulative impacts on communities that are marginalized, underserved, and overburdened by pollution (no cumulative impact analysis was included in the Gowanus Rezoning FEIS, nor did Region 2 note this failure in its limited comments intended to substitute for required participation).
5. Failure to address cumulative additions of gas-burning residences and businesses likely to interfere with environmental justice actions to curtail fossil fuel consumption, including pipelines and electricity generation facilities operating in, or being added to, stressed communities.
6. Failure to act when New York City elected officials and bureaucrats, laboring under cleanup and compliance conflicts of interest, publicly promised already mandated compliance requirements, such as sewer backup clearances and CSO control, as potentially fraudulent inducements to overburdened communities to

accept development that actually adds to their contamination burden (see unsigned, unexecuted, unenforceable Points of Agreement Memo purporting to “provide” multiple infrastructure recapitalization projects already required by law as consideration for NYCHA and other residents agreeing to rezoned development).

### **C. Clean Water Act**

1. Failure to enforce CWA provisions requiring Water Quality Standards promulgation by New York State under delegated authorities to meet federal designated use mandates for fishable/swimmable waters.
2. Failure to enforce CSO control requirements under SPDES permits issued to Owl’s Head (NY 0026166) and Red Hook (NY 0027073) WRRFs for *Separate Storm Sewers* and *Sewer Connection Prohibitions* (paragraphs 9 and 10 respectively), including the failure to deny claims made by New York City that combined sewer system connections by additive Gowanus development constitute “Best Management Practices” under the SPDES.
3. Failure to enforce post-construction compliance monitoring to demonstrate attainment of water quality standards under the Gowanus Long Term Control Plan by New York State or New York City under the 2001 USEPA *Guidance: Coordinating CSO Long-Term Planning with Water Quality Standards Reviews* using either the “presumptive” or “demonstration” approach.
4. Failure to enforce a Total Maximum Daily Load (TMDL) for the Gowanus Canal in light of ongoing CSO control failure, continued listing of the Canal as an Impaired Water under CWA §303, and failure to construct the CSO retention tanks remedy under the CERCLA Administrative Order.
5. Failure to adequately and effectively enforce the 2016 Sewer Backup Administrative Compliance Order (No. CWA-02-2016-3012) to New York City for violations of CWA Section 301 for failed operation and maintenance of its sewage Collection System. Sewer backup complaints have not been appreciably reduced since the Order was issued in 2016.

### **D. Subversion and Retaliation**

1. Inappropriate curtailment of National Grid cleanup requirements at manufactured gas works sites to otherwise reduce rate base charges and potentially mislead shareholders regarding National Grid’s full cleanup liability (see Attachment B).
2. Leveraging of developer funding to complete cleanups meeting ARAR-compliant cleanup objectives in potentially improper substitution of New York City, National Grid, and other PRPs.
3. Retaliatory personnel actions against USEPA staff for sharing accurate information with the public.
4. Failure to apply injunctive and other enforcement relief in the face of ongoing bad-faith negotiations, if not outright compliance defiance by Responsible Parties/Permittees.

In addition to the document links included above, VoG has attached additional materials supporting this Investigation Request, and further incorporates by reference the formal VoG Comments submitted on the Final and Draft Environmental Impact Statement prepared for the Gowanus Neighborhood Rezoning.

It is the stated policy of the Biden Administration to organize and deploy the full capacity of its agencies to combat the climate crisis by implementing a Government-wide approach that: reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure. The total reverse of these objectives will occur under the massive, unpermitted 80-block rezoning demanding major fossil energy use being implemented in a FEMA Flood Zone A surrounding an Impaired Water also designated a Superfund Site subject to continuous coal tar, toxin, and sewage discharges in contravention of law.

VoG further hopes this IG investigation can address or include recommendations for all upland contamination source sites to be designated Subsites or Operable Units in the Gowanus Superfund NPL listing (or apply requirements CERCLA under the Superfund Alternative Program), for necessary compliance and enforcement assurance, and the need for a



Supplemental Environmental Impact Statement before redevelopment that further impedes compliance can occur.

It would also be of assistance to the community if the investigation assessed the status of continued releases of pollutants from Gowanus Canal upland parcels as ongoing violations of the Rivers and Harbors Act, given the failure to include the upland parcels in the Superfund designation precludes application of the various superseding jurisdictional, permitting, and enforcement provisions only granted under Superfund.

VoG thanks you in advance for your attention to these enforcement failures that compound growing climate threats and are simply unsustainable for an unduly burdened community suffering under a century of historic environmental damage and injustice.

Sincerely yours,

Linda LaViolette & Jack Riccobono  
Co-Chairs, Outreach Committee  
Voice of Gowanus  
[linda@voiceofgowanus.org](mailto:linda@voiceofgowanus.org)  
[jack@voiceofgowanus.org](mailto:jack@voiceofgowanus.org)

CC:

The Honorable Joseph R. Biden Jr.  
The Honorable Chuck Schumer  
The Honorable Kirsten Gillibrand  
The Honorable Nydia Velázquez  
The Honorable Jerrold Nadler  
The Honorable Kathy Hochul  
The Honorable Jabari Brisport  
The Honorable Jo Anne Simon  
The Honorable Marcela Mitaynes  
Administrator Michael Regan, EPA  
Matthew Silverman, Assistant U.S. Attorney, Chief of Environmental Litigation, Eastern District, DOJ  
Brenda Mallory, Chair, Council on Environmental Quality, Executive Office of the President  
Matthew Tejada, Director, Office of Environmental Justice, EPA  
Charles Lee, Senior Policy Advisor, Office of Environmental Justice, EPA  
Lawrence Starfield, Acting Assistant Administrator, Office of Enforcement and Compliance Assurance, EPA  
Administrator Lisa Garcia, EPA Region 2  
OIG Hotline

ATCH:

Investigation Request  
Supplemental Compliance Enforcement Information  
“Polluter is Not Paying” Review Memo